

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND

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In re: : :

GABRIELLA I. MOKRI : BK No. 06-11073
Debtor Chapter 7

ORDER DENYING UNITED STATES TRUSTEE'S MOTION TO DISMISS
CASE UNDER 11 U.S.C. §707(b)(3)

Heard on March 7, 2007 on the United States Trustee's Motion to Dismiss the Debtor's Chapter 7 bankruptcy case for abuse under 11 U.S.C. §707(b)(3). Upon consideration of the undisputed facts, the arguments of counsel, and the totality of circumstances concerning the Debtor's financial condition, the motion is DENIED.

The United States Trustee's motion is premised on the Debtor's voluntary contribution of \$160 per month to her 401k account, and making mandatory repayments of \$365 per month to her 401k loan account. Both sides acknowledge that if the Debtor originally filed a Chapter 13 petition, both of these 401k expenditures would not be considered disposable income available to pay creditors. See 11 U.S.C. §§ 541(b)(7) & 1322(f).

Accordingly, I will not consider these payments as disposable income for determining abuse under Section 707(b)(3). See *In re Lenton*, 358 B.R. 651, 664 (Bankr. E.D. Pa. 2006). Without these sums available, the Debtor's monthly surplus is \$23.20, not enough to constitute an abuse under Section 707(b)(3).

Enter judgment consistent with this Order.

Dated at Providence, Rhode Island, this 27th day of April, 2007.



Arthur N. Votolato
U.S. Bankruptcy Judge

Entered on docket: 4/27/07